

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA
HARRISBURG DIVISION

KENNETH B. DAVENPORT : CASE NO.
v. : 4:05-CV-2347
SHARON BURKS, ET AL

TRANSCRIPT OF PROCEEDINGS
SETTLEMENT

BEFORE: HON. JOHN E. JONES, III
DATE: August 6, 2010
11:45 a.m.
PLACE: Judicial Conference Room
8th Floor
Federal Building
Harrisburg, Pennsylvania
BY: Wendy C. Yinger, RPR, CRR
U.S. Official Court Reporter

APPEARANCES:

KENNETH L. RACKOWSKI, ESQUIRE
For the Plaintiff
KENNETH B. DAVENPORT, PLAINTIFF
via videoconference
GWENDOLYN T. MOSLEY, ESQUIRE
For the Defendants

1 THE COURT: Mr. Davenport, we're trying to establish
2 a land line, so if we drop you again it won't interrupt our
3 ability to proceed. We're on the record in the matter of
4 Davenport versus Burks, et al, and numerous Defendants. Wendy
5 has the caption and she'll apply that. We are present in
6 Harrisburg. We have conducted a settlement conference for the
7 last almost three hours. I'd like, Liz, if you would swear in
8 -- my deputy is here. Would you swear in Mr. Davenport,
9 please.

10 (Whereupon, Mr. Davenport was sworn.)

11 THE COURT: All right. After extensive discussion
12 with the parties, it's the Court's understanding that a
13 possible settlement works around these lines: That the Court
14 would enter a 90-day closing order in this case; that the
15 Defendants would pay within that interval to the Plaintiff the
16 sum of \$5000.00.

17 In addition to that, it's my understanding that there
18 needs to be some clarification, and I recognize that this is a
19 sticking point, with respect to procedures in the law library
20 where Mr. Davenport finds himself, particularly at Dallas. The
21 purpose of this agreement, if it is an agreement, is not to
22 attempt to overwrite any policies or procedures of the
23 Department of Corrections.

24 It's the Court's understanding that, from Mr.
25 Davenport's standpoint, there has been some unclarity as to

1 what he is and is not permitted to do within the law library.
2 My suggestion is that the settlement should be governed by
3 this: That Mr. Davenport, when he is in the prison law
4 library, will have the privilege, but not the right, subject to
5 the administrative procedures of the prison, to discuss with
6 other inmates within the library their legal affairs and to
7 review their legal affairs with them so long as it is for an
8 appropriate purpose.

9 And that would be the counseling and discussion with
10 other inmates about their legal affairs. He could not conduct
11 a legal clinic within the library. He could not breach the
12 peace. He could not cause disturbance within the library. He
13 must adhere to all the other administrative regulations, in
14 fact all regulations in the institution, including that he is
15 permitted to be in the library as according to time schedules
16 that are pre-arranged as per present policy. But if he does
17 that, it's my understanding that, that is not inconsistent with
18 the prison policy.

19 Now before I go to Mr. Davenport, Ms. Mosley, is that
20 an accurate statement of what Mr. Davenport is permitted and it
21 is a privilege to do?

22 MS. MOSELY: It's the use of the word privilege, Your
23 Honor.

24 THE COURT: Well, I use privilege rather than right,
25 Ms. Mosley. That's why I used that word. It was very

1 intentional.

2 MS. MOSELY: Right.

3 THE COURT: Anything that Mr. Davenport is allowed to
4 do along those lines, as I understand it, is a privilege and a
5 privilege can be denied administratively if he abuses the
6 privilege. And I specifically avoid the word right based on
7 conversations I had with counsel. Is that acceptable?

8 MS. MOSELY: That's acceptable.

9 THE COURT: All right. Mr. Davenport, is that
10 acceptable to you?

11 THE DEFENDANT: Yeah. Yeah, just one clarification.
12 Outside -- say if I have drafts of materials or something I am
13 doing for another individual, how is that being viewed in terms
14 of contraband?

15 THE COURT: Well, you cannot take anybody else's
16 materials out of the law library and keep them as your own, as
17 you and I discussed as a condition of the settlement. We can't
18 rewrite or overwrite the Department of Corrections' policy that
19 you can't take somebody else's property back to your cell.
20 Whether we agree or disagree with that policy, it is what the
21 policy is.

22 So anything that you do within the law library, to
23 the extent that you are utilizing somebody else's property
24 within the law library, it has to stay with them and go back to
25 their cell as your property has to go back to your cell.

1 That's the point. And I can't change that. And that's not
2 anything that you could achieve in this lawsuit in any event.

3 MR. DAVENPORT: No, I wasn't saying somebody else's
4 original materials. All I'm saying, Judge, if I have a letter
5 here that I did for John Doe to his attorney, Ms. Mosley, under
6 the current policy, that should be permissible, right?

7 THE COURT: Well, what do you mean? Can you send
8 that letter?

9 MR. DAVENPORT: No. I'm saying, if I do a letter for
10 some person --

11 THE COURT: If you do the letter for them while you
12 are in the library, and you hand it to them, it appears to the
13 Court that's permissible. They take it with them, mail it, do
14 whatever they want to do. It's just that you can't take
15 anything that would be their legal papers or property back to
16 your cell. Do you understand that?

17 MR. DAVENPORT: Correct.

18 MS. MOSELY: There is another issue, and that has to
19 do with your using library facilities and equipment such as
20 typewriters to do the work of other inmates. As I understand
21 it, that is still prohibited. So you're not going to be
22 permitted to do that. This writing the letter, the typewriters
23 and other equipment, they're for each inmate's own personal use
24 and not for you to help someone else.

25 THE COURT: That gets Mr. Davenport to my comment

1 about conducting a legal clinic. You can't, you know, perhaps
2 go as far as you want to in assisting others and preparing
3 paperwork on hardware or other facilities that they have in the
4 library. But the gist of the arrangement is that you can have
5 conversations.

6 (The videoconference went down again and reception
7 was restored.)

8 THE COURT: Okay. We're back on. Mr. Davenport, so
9 the gist of this is that you can have conversations. You can
10 interpret. You can chat with inmates about their legal issues.
11 But when it comes down to serving as the preparer of things for
12 them, using the prison facilities, and that would be
13 typewriters apparently, word processors, whatever else, they
14 have to do that for themselves. That's the practice and the
15 procedure. Do you understand that?

16 MR. DAVENPORT: Right, yeah. But understand this
17 though, I have a typewriter in my own cell, so I'm suggesting
18 that, if I choose to, I can type a letter for somebody else?

19 THE COURT: Well, I'm talking about what happens in
20 the prison library. I don't want to broaden this beyond that.

21 MR. DAVENPORT: Right, okay.

22 THE COURT: That's the understanding. I don't want
23 to go where I don't know.

24 MR. DAVENPORT: Okay.

25 THE COURT: I'm not here to change prison procedures

1 to that extent. I'm talking about your interaction with other
2 inmates in the law library. That's what we're discussing.

3 Okay?

4 MR. DAVENPORT: Okay.

5 THE COURT: Is that acceptable to you?

6 MR. DAVENPORT: Yes, sir.

7 THE COURT: Is that acceptable to the Defendants?

8 MS. MOSELY: Yes.

9 THE COURT: All right. So the Court, Mr. Davenport,
10 and Ms. Mosley will enter a 90-day closing order. That's
11 principally for the purpose of allowing the \$5000.00 to be
12 paid, and the Court will take no other steps. We will not have
13 to take any other steps unless something impedes or impairs
14 your ability to fully consummate the settlement at this time.
15 And I should ask Plaintiff's counsel, is that acceptable to
16 you?

17 MR. RACKOWSKI: It is, Your Honor.

18 THE COURT: All right.

19 (Whereupon, the settlement conference concluded at
20 11:55 a.m.)
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CERTIFICATION

I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me on the within proceedings, and that this copy is a correct transcript of the same.

/s/ Wendy C. Yinger

Wendy C. Yinger, RPR, CRR
U.S. Official Court Reporter
(717) 440-1535

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